

Introduced by Senator Migden

February 23, 2007

An act to amend Sections 132a, 3201.81, 4658.5, and 4658.6 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 942, as introduced, Migden. Workers' compensation.

(1) Existing Workers' Compensation Law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law declares that it is the policy of this state that there should not be discrimination against workers who are injured in the course or scope of their employment.

This bill would provide that there is a rebuttable presumption that an employer has discriminated against an employee if, after the employee has been disabled from work as a result of injury or illness arising out of, or in the course of, employment pursuant to which the employee is eligible to receive workers' compensation benefits, the employer refuses to reinstate the employee to his or her regular position with full wages and benefits within one working day after receipt of a written statement by the employee's treating physician that the employee is able to perform the full requirements of the employee's regular position, notwithstanding the inherent risks of the position, without risk of further injury to the employee or other employees in the workplace. The bill would make it a misdemeanor for an employer to refuse to reinstate an employee to his or her preinjury position pursuant to these provisions. The bill would provide that it shall also be a violation of those provisions for an employer to require an employee to perform additional physical duties that were not required of the employee prior to his or her injury

as a condition for returning to employment. By creating a new crime, the bill would impose a state-mandated local program.

(2) Existing law provides for the payment of temporary disability indemnity payments to any injured employee under specified circumstances, with certain exceptions, and provides that, if an injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability indemnity payments, the injured employee shall receive a supplemental job displacement benefit, as specified. Existing law further provides that an employer shall not be liable for supplemental job displacement benefits if, within 30 days of termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, modified work, accommodating the employee's work restrictions, lasting at least 12 months.

This bill would, instead, provide that, for injuries occurring on or after January 1, 2008, if the injury causes permanent partial disability and the injured employee does not return to work within 60 days from the date an injury is determined to be permanent and stationary, the employee shall receive a supplemental job displacement benefit, and would revise the amounts of benefits an injured employee would be eligible to receive, as specified.

(3) Existing law provides that the employer shall not be liable for the supplemental job displacement benefit if, within 30 days of the termination of temporary disability indemnity benefits, the employer offers, and the employee rejects, or fails to accept, modified or alternative work, as specified.

This bill instead would provide that an employer shall not be liable for supplemental job displacement benefits if, within 10 days of the date the injury is determined to be permanent and stationary, the employee rejects, or fails to accept, modified or alternative work. It would also make a technical, clarifying change.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 132a of the Labor Code is amended to read:

132a. (a) It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment. *It is further the policy of this state that there should not be discrimination against employees who attempt to exercise their rights under subdivision (d) of Section 4600.*

(1)

(b) (1) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and the employee's compensation shall be increased by one-half, but in no event more than ten thousand dollars (\$10,000), together with costs and expenses not in excess of two hundred fifty dollars (\$250). Any such employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(2) Any insurer that advises, directs, or threatens an insured under penalty of cancellation or a raise in premium or for any other reason, to discharge an employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and subject to the increased compensation and costs provided in paragraph (1).

(3) Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because the employee testified or made known his or her intentions to testify in another employee's case before the appeals board, is guilty of a misdemeanor, and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(4) (A) *It shall be presumed that an employer has discriminated against an employee in violation of paragraph (1) if, after the*

1 employee has been disabled by an injury or illness arising out of,
2 or in the course of, employment, the employer refuses to reinstate
3 the employee to full wages and benefits within one working day
4 after receipt of a written statement by the treating physician that
5 the employee is able to perform the full requirements of the
6 employee's regular position, notwithstanding the risks inherent
7 in the position, without a risk of further injury to the employee or
8 others. This presumption is disputable and may be controverted
9 by other evidence, but unless so controverted, the appeals board
10 is bound to find in accordance with it.

11 (B) Any employer who refuses to reinstate an employee to his
12 or her preinjury job in accordance with the requirements of this
13 section is guilty of a misdemeanor, and shall pay a penalty of one
14 hundred dollars (\$100) per day for each day the employer is in
15 violation of this paragraph, plus the employee's full wages and
16 benefits. It shall also be a violation of this section for an employer
17 to require an employee to perform additional physical duties that
18 the employee was not required to perform prior to the illness or
19 injury as a condition of returning to work. Nothing in this
20 paragraph shall preclude an employer from seeking an alternative
21 opinion from an agreed medical evaluator pursuant to Section
22 4062 if the employer continues to reinstate the employee to his or
23 her position with full wages and benefits. The report of the agreed
24 medical evaluator shall be based on an in-person physical
25 examination of the employee. If the report of the agreed medical
26 evaluator states that the employee is unable to perform the full
27 requirements of the employee's regular position, or is unable to
28 perform the full requirements of the employee's regular position,
29 notwithstanding the inherent risks of the position, without risk of
30 further illness or injury to the employee or to others then the
31 employer shall be released from any further obligation to reinstate
32 the employee to full wages and benefits pursuant to this paragraph
33 and shall not be liable for penalties for a violation of this section.

34 ~~(4)–~~

35 (5) Any insurer that advises, directs, or threatens an insured
36 employer under penalty of cancellation or a raise in premium or
37 for any other reason, to discharge or in any manner discriminate
38 against an employee because the employee testified or made known
39 his or her intention to testify in another employee's case before
40 the appeals board, is guilty of a misdemeanor.

1 Proceedings

2 (6) *Proceedings* for increased compensation as provided in
3 paragraph (1), or for reinstatement and reimbursement for lost
4 wages and work benefits, are to be instituted by filing an
5 appropriate petition with the appeals board, but these proceedings
6 may not be commenced more than one year from the discriminatory
7 act or date of termination of the employee. The appeals board is
8 vested with full power, authority, and jurisdiction to try and
9 determine finally all matters specified in this section subject only
10 to judicial review, except that the appeals board shall have no
11 jurisdiction to try and determine a misdemeanor charge. The
12 appeals board may refer and any worker may complain of suspected
13 violations of the criminal misdemeanor provisions of this section
14 to the Division of Labor Standards Enforcement, or directly to the
15 office of the public prosecutor.

16 SEC. 2. Section 3201.81 of the Labor Code is amended to read:

17 3201.81. In the horse racing industry, the organization certified
18 by the California Horse Racing Board to represent the majority of
19 licensed jockeys pursuant to subdivision (b) of Section 19612.9
20 of the Business and Professions Code is the labor organization
21 authorized to negotiate the collective bargaining agreement
22 establishing an alternative dispute resolution system for licensed
23 jockeys pursuant to Section ~~3201.8~~ 3201.7.

24 SEC. 3. Section 4658.5 of the Labor Code is amended to read:

25 4658.5. (a) (1) Except as provided in Section 4658.6, if the
26 injury causes permanent partial disability and the injured employee
27 does not return to work for the employer within 60 days of the
28 termination of temporary disability, the injured employee shall be
29 eligible for a supplemental job displacement benefit in the form
30 of a nontransferable voucher for education-related retraining or
31 skill enhancement, or both, at state-approved or accredited schools,
32 as follows:

33 ~~(1)~~

34 (A) Up to four thousand dollars (\$4,000) for permanent partial
35 disability awards of less than 15 percent.

36 ~~(2)~~

37 (B) Up to six thousand dollars (\$6,000) for permanent partial
38 disability awards between 15 and 25 percent.

39 ~~(3)~~

1 (C) Up to eight thousand dollars (\$8,000) for permanent partial
2 disability awards between 26 and 49 percent.

3 ~~(4)~~

4 (D) Up to ten thousand dollars (\$10,000) for permanent partial
5 disability awards between 50 and 99 percent.

6 (2) *Except as provided in Section 4658.6, for injuries occurring*
7 *on or after January 1, 2008, if the injury causes permanent partial*
8 *disability and the injured employee does not return to work for*
9 *the employer within 60 days from the date an injury is determined*
10 *to be permanent and stationary, the employee shall be eligible for*
11 *a supplemental job displacement benefit in the form of a*
12 *nontransferable voucher for education-related retraining or skill*
13 *enhancement, or both, at state accredited schools, in the amount*
14 *of two thousand five hundred dollars (\$2,500) per semester for*
15 *each semester an injured employee is actually enrolled in a*
16 *state-approved or accredited school. The voucher shall not exceed*
17 *a total amount of ten thousand dollars (\$10,000).*

18 (b) The voucher may be used for payment of tuition, fees, books,
19 and other expenses required by the school for retraining or skill
20 enhancement. No more than 10 percent of the voucher moneys
21 may be used for vocational or return to work counseling. The
22 administrative director shall adopt regulations governing the form
23 of payment, direct reimbursement to the injured employee upon
24 presentation to the employer of appropriate documentation and
25 receipts, and any other matters necessary to the proper
26 administration of the supplemental job displacement benefit.

27 ~~(c) Within 10 days of the last payment of temporary disability~~
28 ~~*from the date the injury is determined to be permanent and*~~
29 ~~*stationary, the employer shall provide to the employee, in the form*~~
30 ~~*and manner prescribed by the administrative director, information*~~
31 ~~*that provides notice of rights under this section. This notice shall*~~
32 ~~*be sent by certified mail.*~~

33 (d) ~~This~~ *Except as provided in paragraph (2) of subdivision (a),*
34 *this section shall apply to injuries occurring on or after January 1,*
35 *2004.*

36 SEC. 4. Section 4658.6 of the Labor Code is amended to read:

37 4658.6. The employer shall not be liable for the supplemental
38 job displacement benefit if the employer meets either of the
39 following conditions:

1 (a) ~~Within 30 days of the termination of temporary disability~~
2 ~~indemnity payments 10 days of the date the injury is determined~~
3 ~~to be permanent and stationary~~, the employer offers, and the
4 employee rejects, or fails to accept, in the form and manner
5 prescribed by the administrative director, modified work,
6 accommodating the employee's work restrictions, lasting at least
7 12 months.

8 (b) ~~Within 30 days of the termination of temporary disability~~
9 ~~indemnity payments 10 days of the date the injury is determined~~
10 ~~to be permanent and stationary~~, the employer offers, and the
11 employee rejects, or fails to accept, in the form and manner
12 prescribed by the administrative director, alternative work meeting
13 all of the following conditions:

14 (1) The employee has the ability to perform the essential
15 functions of the job provided.

16 (2) The job provided is in a regular position lasting at least 12
17 months.

18 (3) The job provided offers wages and compensation that are
19 within 15 percent of those paid to the employee at the time of
20 injury.

21 (4) The job is located within reasonable commuting distance of
22 the employee's residence at the time of injury.

23 SEC. 5. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.